

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

Case No. 2:22-cv-00125-JRG

JURY TRIAL DEMANDED

**JOINT MOTION FOR LEAVE TO SUPPLEMENT INFRINGEMENT
AND INVALIDITY CONTENTIONS**

Plaintiff Entropic Communication, LLC (“Entropic”) and Defendant Charter Communications, Inc. (“Charter”) file this Joint Motion for Leave to Supplement Entropic’s Infringement Contentions and Charter’s Invalidity Contentions (the “Motion”).

Entropic served its infringement contentions on Charter on July 5, 2022, pursuant to Local Patent Rule 3-1 and the Docket Control Order. On September 2, 2022, pursuant to Local Patent Rule 3-3 and the Docket Control Order, Charter served its invalidity contentions.

On May 31, 2023, this Court granted Entropic’s request to supplement its infringement contentions (*see* Dkt. 111), which Entropic had previously served on Charter on March 10, 2023. Discovery has been ongoing and due to facts Entropic contends are newly discovered, Entropic notified Charter on June 7, 2023, that additional supplementation of Entropic’s infringement contentions was necessary. Charter also indicated at that time that it was planning to provide supplemental invalidity contentions on June 23, 2023. The parties met and conferred on June 9, 2023, regarding both parties’ proposed supplementation. At that time, the parties agreed to

exchange supplemental contentions on June 23, 2023, and then follow up with additional discussions to determine if either party opposed such supplementation.

On June 23, 2023, Entropic served Exhibits B, C, E and F to its second supplemental infringement contentions which, among other things, asserted additional claims from U.S. Patent No. 8,792,008 (the “’008 Patent”) (claims 3–6 in addition to previously asserted claims 1–2). Charter served its first supplemental invalidity contentions (including Exhibits A5, B7, C11, D6 and F6) on that same date. On June 29, 2023, Entropic served its second supplemental infringement contention cover pleading. Following additional meet and confers, Entropic amended its second supplemental infringement contention cover pleading along with Exhibits C and E (dated June 30, 2023), and Charter provided its second supplemental invalidity contention cover pleading (dated July 3, 2023). Charter will provide its supplemental invalidity contentions on the newly asserted claims from the ’008 Patent by August 10, 2023. The parties will meet and confer to discuss timing of expert depositions.

Entropic’s Statement Of Good Cause To Supplement Its Infringement Contentions

Good cause exists for the Court to grant this motion with respect to Entropic’s request to supplement its infringement contentions. Entropic was diligent in serving Charter with its second supplemental infringement contentions on June 23, 2023. While Entropic is asserting additional claims from the ’008 Patent, there are not any terms that need construction in the newly asserted claims, and the infringement allegations are based on newly discovered facts relating to how the accused instrumentalities operate, but the infringement allegations are similar to what was already asserted. In addition, Entropic’s second supplemental infringement contentions added the accused cable modem products (which are already accused instrumentalities with respect to U.S. Patent No. 8,223,775 (the “’775 Patent”)) to both the ’008 Patent and U.S. Patent No. 9,825,826 (the

“’826 Patent”) infringement contentions. These additional accused instrumentalities were added based on testimony from Charter’s witnesses in late May and early June indicating that Charter’s system treats cable modems similar to set top boxes for purposes of infringement of both the ’008 Patent and ’826 Patent,. This information was not available prior to receiving this deposition testimony.

With respect to the second supplemental infringement contentions for U.S. Patent No. 8,284,690 (the “’690 Patent”), depositions at the end of May and early June indicated that Charter was using physical layer probes in an infringing manner in conjunction with Charter’s Scope system. Such information was not available prior to receiving this deposition testimony.

Lastly, with respect to the second supplemental infringement contentions for U.S. Patent No. 10,135,682 (the “’682 Patent”), depositions at the end of May and early June, indicated the accused instrumentalities were infringing the ’682 Patent based on Charter’s implementation of PMA (Profile Management Application). Such information was not available prior to receiving this deposition testimony. Moreover, Charter does not oppose Entropic’s supplementation.

Charter’s Statement Of Good Cause To Supplement Its Invalidity Contentions

Good cause exists for the Court to grant this motion with respect to Charter’s request to supplement its invalidity contentions. Since the time the Court last granted Entropic permission to supplement its infringement contentions on May 31, 2023, Entropic has (i) added additional accused products; (ii) added additional asserted claims; and (iii) significantly changed its infringement theories (Entropic details some of these changes to its infringement contentions in its section above). Supplementation is also necessary in light of the Court’s June 26, 2023 Claim Construction Order (Dkt. 123). Moreover, Entropic does not oppose Charter’s supplementation.

For these reasons, Entropic and Charter respectfully request the Court grant their Motion.

Dated: July 12, 2023

Respectfully submitted,

/s/ James Shimota by permission Wesley Hill

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and served via email on all counsel of record on July 12, 2023.

/s/ Wesley Hill

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies pursuant to Local Rule CV-7(i) that the relief requested in this motion is agreed.

/s/ Wesley Hill